

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

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76-7566

United States Court of Appeals

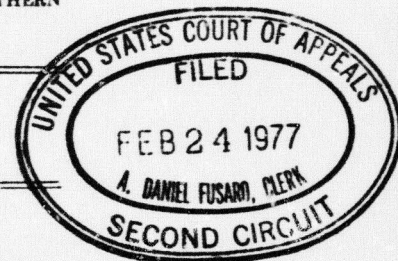
For the Second Circuit.

DANIEL H. OVERMYER and SHIRLEY OVERMYER,
Plaintiffs-Appellants,
against

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, THE
STATE OF NEW YORK, THOMAS J. DELANEY, EDWARD A.
PICHLER, and ANDREW R. TYLER,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK.

SUPPLEMENTAL APPENDIX.



EASTON & ECHTMAN, P. C.
Attorneys for Plaintiffs-Appellants
6 East 39 Street
New York, N. Y. 10016
(212) 683-5516

HENDLER AND MURRAY
Attorneys for Defendant-Appellee
Fidelity and Deposit Company of Maryland
15 Park Row
New York, N. Y. 10038
(212) 964-4590

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Attorney for Defendants-Appellees
New York State and Andrew R. Tyler
2 World Trade Center
New York, N. Y. 10048
(212) 488-3396

GERALD HARRIS
Attorney for Defendant-Appellee
Thomas J. Delaney
County Office Building
White Plains, N. Y. 10601
(914) 682-2000

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EXHIBIT A, ANNEXED TO AFFIDAVIT OF ARTHUR LAMBERT.

IN THE COUNTY COURT AT LAW, NUMBER TWO,
DALLAS COUNTY, TEXAS.

- - - - -X

ELIOT REALTY, INC.,

vs.

OVERMYER DISTRIBUTION SERVICES, INC.

No.

No. CC73-10102-b.

- - - - -X

JUDGMENT.

On October 11, 1973, came on for trial the above entitled and numbered cause in County Court at Law Number Two of Dallas County, Texas, wherein Eliot Realty, Inc. is Plaintiff and Overmyer Distribution Services, Inc. is Defendant. Plaintiff appeared through its corporate representatives and its attorney of record and announced ready for trial and the Defendant appeared through its attorney of record and announced ready for trial.

Whereupon, no jury having been demanded by either of the parties hereto, and the Court having examined the pleadings and records herein and having determined that

EXHIBIT A, ANNEXED TO AFFIDAVIT OF ARTHUR LAMBERT

same are in due form and contain all of the allegations and information required by law and that this Court has jurisdiction over the subject matter and the parties, the Court proceeded to try said cause and all matters of fact and of law were submitted to the Court. The Court having heard the pleadings and the evidence and argument of counsel is of the opinion that all the prerequisites of law have been complied with and that the material allegations of the Plaintiff's petition have been proven by full and satisfactory evidence and are true, and being fully advised in the premises, enters judgment against the Defendant in accordance with the findings and rulings herein set out:

On August 28, 1973 in the Justice Court of Dallas County, Texas, Precinct No. One, a judgment was awarded to Eliot Realty, Inc. against Overmyer Distribution Services, Inc. for possession of real property and costs. Appeal bond was filed timely and appeal was perfected by the Defendant to this Court. Plaintiff filed its First Amended Original Petition in this Court alleging damages incurred by it during the pendency of the appeal from the judgment of the Justice Court. The

EXHIBIT A, ANNEXED TO AFFIDAVIT OF ARTHUR LAMBERT

Court finds that the Plaintiff has been deprived of the reasonable rental market value of the premises during the pendency of the appeal, and has incurred attorneys fees and additional expenses in prosecuting this cause in the County Court and that the same were reasonable and necessary. The Court is further of the opinion that Plaintiff, Eliot Realty, Inc., should have possession of the premises described in its petition of and from the Defendant, Overmyer Distribution Services, Inc., and having made such further findings as authorized by law, consistent with the judgment herein rendered,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Eliot Realty, Inc. have restitution from the Defendant Overmyer Distribution Services, Inc. of the premises described in Plaintiff's petition as follows:

Lots Numbers 1 and 2, Block A city Block No. 7702 of Overmyer Subdivision, an addition to the City of Dallas, Texas, according to the plat of same recorded in Volume 719, Page 841 of the Map Records of Dallas County, Texas; and being the same property located at the 4545-4557 Leston Street address in Dallas, Texas;

for which Plaintiff shall have Writ of Restitution issued by the Clerk of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Eliot Realty, Inc. recover of and from the Defendant

EXHIBIT A, ANNEXED TO AFFIDAVIT OF ARTHUR LAMBERT

Overmyer Distribution Services, Inc. the sum of \$28,092.25, plus legal interest on such sum at the rate of 6% per annum from date hereof until paid, and costs of court, and that Eliot Realty, Inc. have execution against the Defendant and the surety, Fidelity and Deposit Company of Maryland, on the appeal bond made and filed herein by the Defendant Overmyer Distribution Services, Inc., it being further the finding of the Court that the Defendant and the surety on its appeal bond are liable, and judgment is rendered against them on such bond.

To the foregoing judgment, the Defendant duly excepted and gave notice of appeal.

SIGNED AND ENTERED this 12 day of October, 1973.

TOM KING,
Judge

Approved as to Form:

ALVIN A. OHM
Attorney for Plaintiff

ROBERT E. WOODF
Attorney for Defendant.

United States Court of Appeals for the Second Circuit
Daniel H. Overmyer and Shirley Overmyer, Appellants
Fidelity and Deposit Company of Maryland et al, appellees

State of New York, County of New York, ss.:

Bernard S. Greenberg, being duly sworn deposes and says that he is
agent for Hendler & Murray the attorney
for the above named Appellee - Fidelity herein. That he is over
21 years of age, is not a party to the action and resides at
162 East 7th Street, New York, N.Y.

That on the 23rd day of February, 1977
~~Supplemental Appendix~~ he served the within
Supplemental Appendix

upon the attorneys for the parties and at the addresses as specified below

Gerald Harris
County Office Building.
White Plains, N.Y. 10601

by depositing 2 true copies
to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly main-
tained by the United States Government at
90 Church Street, New York, New York
directed to the said attorneys for the parties as listed above at the addresses aforementioned,
that being the addresses within the state designated by them for that purpose, or the places
where they then kept offices between which places there then was and now is a regular com-
munication by mail.

Sworn to before me, this 23rd

day of February, 1977

Roland W. Johnson
ROLAND W. JOHNSON,
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977

Bernard S. Greenberg

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Attorney for

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NEW YORK CITY OFFICE
James J. Leikowitz
ATTORNEY GENERAL
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